

AMENDED IN SENATE MARCH 6, 2003

SENATE BILL

No. 25

Introduced by Senator Bowen

*(Coauthors: Senators Aanestad, Alpert, Chesboro, Soto, and
Torlakson)*

(Coauthors: Assembly Members Hancock, Koretz, and Pavley)

December 2, 2002

An act to amend Sections 1785.11.1, 1785.15, and 1798.85 of the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 25, as amended, Bowen. Personal information: security.

(1) Existing law authorizes a consumer to place a security alert in his or her credit report, as specified, and sets forth the duties of a consumer credit reporting agency with regard to a security alert. *Existing law requires a consumer credit reporting agency to provide specified disclosures of a consumer's rights in connection with consumer credit reporting.*

This bill would further provide that any person who uses a consumer credit report in connection with the approval of credit, as specified, may not lend money, extend credit, or complete the purchase, lease, or rental of goods or noncredit related services without taking reasonable steps to verify the consumer's identity, in order to ensure that the application for an extension of credit or for the purchase, lease, or rental of goods or noncredit related services is not the result of identity theft. The bill would also specify that if a consumer has placed a statement with the security alert in his or her file requesting that identity be verified by calling a specified telephone number, any person who receives that statement with the security alert in a consumer's file must take

reasonable steps to verify his or her identity by contacting the consumer using the specified telephone number prior to lending money, extending credit, or completing the purchase, lease, or rental of goods or noncredit related services, with certain exceptions. *This bill would also revise the disclosures that a consumer credit reporting agency is required to give a consumer.*

(2) Existing law prohibits a person or entity, but not a state or local agency, from publicly posting or displaying an individual's social security number or doing certain other acts that might compromise the security of an individual's social security number on or after July 1, 2002, except as specified.

~~This bill would impose a state-mandated local program by extending~~ *extend* these requirements to state and local agencies ~~on or after January 1, 2004,~~ subject to the same exceptions. *This bill would also provide that a person or entity may not record or imbed a social security number in or on a card or document, including using a bar code, chip, magnetic strip, or other technology, in place of removing the social security number.*

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1785.11.1 of the Civil Code is amended
2 to read:

3 1785.11.1. (a) A consumer may elect to place a security alert
4 in his or her credit report by making a request in writing or by
5 telephone to a consumer credit reporting agency. "Security alert"
6 means a notice placed in a consumer's credit report, at the request

1 of the consumer, that notifies a recipient of the credit report that
2 the consumer's identity may have been used without the
3 consumer's consent to fraudulently obtain goods or services in the
4 consumer's name.

5 (b) A consumer credit reporting agency shall notify each
6 person requesting consumer credit information with respect to a
7 consumer of the existence of a security alert in the credit report of
8 that consumer, regardless of whether a full credit report, credit
9 score, or summary report is requested.

10 (c) Each consumer credit reporting agency shall maintain a
11 toll-free telephone number to accept security alert requests from
12 consumers 24 hours a day, seven days a week.

13 (d) The toll-free telephone number shall be included in any
14 written disclosure by a consumer credit reporting agency to any
15 consumer pursuant to Section 1785.15 and shall be printed in a
16 clear and conspicuous manner.

17 (e) A consumer credit reporting agency shall place a security
18 alert on a consumer's credit report no later than five business days
19 after receiving a request from the consumer.

20 (f) The security alert shall remain in place for at least 90 days,
21 and a consumer shall have the right to request a renewal of the
22 security alert.

23 (g) Any person who uses a consumer credit report in
24 connection with the approval of credit based on an application for
25 an extension of credit, or with the purchase, lease, or rental of
26 goods or noncredit related services and who receives notification
27 of a security alert pursuant to subdivision (a) may not lend money,
28 extend credit, or complete the purchase, lease, or rental of goods
29 or non-credit-related services without taking reasonable steps to
30 verify the consumer's identity, in order to ensure that the
31 application for an extension of credit or for the purchase, lease, or
32 rental of goods or noncredit related services is not the result of
33 identity theft. If the consumer has placed a statement with the
34 security alert in his or her file requesting that identity be verified
35 by calling a specified telephone number, any person who receives
36 that statement with the security alert in a consumer's file pursuant
37 to subdivision (a) shall take reasonable steps to verify the identity
38 of the consumer by contacting the consumer using the specified
39 telephone number prior to lending money, extending credit, or
40 completing the purchase, lease, or rental of goods or

1 non-credit-related services. If a person uses a consumer credit
2 report to facilitate the extension of credit or for another
3 permissible purpose on behalf of a subsidiary, affiliate, agent,
4 assignee, or prospective assignee, that person may verify a
5 consumer's identity under this section in lieu of the subsidiary,
6 affiliate, agent, assignee, or prospective assignee.

7 (h) For purposes of this section, "extension of credit" does not
8 include an increase in the dollar limit of an existing open-end
9 credit plan, as defined in Regulation Z issued by the Board of
10 Governors of the Federal Reserve System (12 C.F.R. 226.2), or
11 any change to, or review of, an existing credit account.

12 (i) If reasonable steps are taken to verify the identity of the
13 consumer pursuant to subdivision (b) of Section 1785.20.3, those
14 steps constitute compliance with the requirements of this section,
15 except that if a consumer has placed a statement including a
16 telephone number with the security alert in his or her file, his or
17 her identity shall be verified by contacting the consumer using that
18 telephone number as specified pursuant to subdivision (g).

19 SEC. 2. *Section 1785.15 of the Civil Code is amended to read:*

20 1785.15. (a) A consumer credit reporting agency shall
21 supply files and information required under Section 1785.10
22 during normal business hours and on reasonable notice. In addition
23 to the disclosure provided by this chapter and any disclosures
24 received by the consumer, the consumer has the right to request
25 and receive all of the following:

26 (1) Either a decoded written version of the file or a written copy
27 of the file, including all information in the file at the time of the
28 request, with an explanation of any code used.

29 (2) A credit score for the consumer, the key factors, and the
30 related information, as defined in and required by Section
31 1785.15.1.

32 (3) A record of all inquiries, by recipient, which result in the
33 provision of information concerning the consumer in connection
34 with a credit transaction that is not initiated by the consumer and
35 which were received by the consumer credit reporting agency in
36 the 12-month period immediately preceding the request for
37 disclosure under this section.

38 (4) The recipients, including end users specified in Section
39 1785.22, of any consumer credit report on the consumer which the
40 consumer credit reporting agency has furnished:

1 (A) For employment purposes within the two-year period
2 preceding the request.

3 (B) For any other purpose within the 12-month period
4 preceding the request.

5 Identification for purposes of this paragraph shall include the
6 name of the recipient or, if applicable, the fictitious business name
7 under which the recipient does business disclosed in full. If
8 requested by the consumer, the identification shall also include the
9 address of the recipient.

10 (b) Files maintained on a consumer shall be disclosed promptly
11 as follows:

12 (1) In person, at the location where the consumer credit
13 reporting agency maintains the trained personnel required by
14 subdivision (d), if he or she appears in person and furnishes proper
15 identification.

16 (2) By mail, if the consumer makes a written request with
17 proper identification for a copy of the file or a decoded written
18 version of that file to be sent to the consumer at a specified address.
19 A disclosure pursuant to this paragraph shall be deposited in the
20 United States mail, postage prepaid, within five business days after
21 the consumer's written request for the disclosure is received by the
22 consumer credit reporting agency. Consumer credit reporting
23 agencies complying with requests for mailings under this section
24 shall not be liable for disclosures to third parties caused by
25 mishandling of mail after the mailings leave the consumer credit
26 reporting agencies.

27 (3) A summary of all information contained in files on a
28 consumer and required to be provided by Section 1785.10 shall be
29 provided by telephone, if the consumer has made a written request,
30 with proper identification for telephone disclosure.

31 (4) Information in a consumer's file required to be provided in
32 writing under this section may also be disclosed in another form
33 if authorized by the consumer and if available from the consumer
34 credit reporting agency. For this purpose a consumer may request
35 disclosure in person pursuant to Section 1785.10, by telephone
36 upon disclosure of proper identification by the consumer, by
37 electronic means if available from the consumer credit reporting
38 agency, or by any other reasonable means that is available from the
39 consumer credit reporting agency.

(c) “Proper identification,” as used in subdivision (b) means that information generally deemed sufficient to identify a person. Only if the consumer is unable to reasonably identify himself or herself with the information described above, may a consumer credit reporting agency require additional information concerning the consumer’s employment and personal or family history in order to verify his or her identity.

(d) The consumer credit reporting agency shall provide trained personnel to explain to the consumer any information furnished him or her pursuant to Section 1785.10.

(e) The consumer shall be permitted to be accompanied by one other person of his or her choosing, who shall furnish reasonable identification. A consumer credit reporting agency may require the consumer to furnish a written statement granting permission to the consumer credit reporting agency to discuss the consumer’s file in that person’s presence.

(f) Any written disclosure by a consumer credit reporting agency to any consumer pursuant to this section shall include a written summary of all rights the consumer has under this title and in the case of a consumer credit reporting agency which compiles and maintains consumer credit reports on a nationwide basis, a toll-free telephone number which the consumer can use to communicate with the consumer credit reporting agency. The written summary of rights required under this subdivision is sufficient if in substantially the following form:

“You have a right to obtain a copy of your credit file from a consumer credit reporting agency. You may be charged a reasonable fee not exceeding eight dollars (\$8). There is no fee, however, if you have been turned down for credit, employment, insurance, or a rental dwelling because of information in your credit report within the preceding 60 days. The consumer credit reporting agency must provide someone to help you interpret the information in your credit file.

You have a right to dispute inaccurate information by contacting the consumer credit reporting agency directly. However, neither you nor any credit repair company or credit service organization has the right to have accurate, current, and verifiable information removed from your credit report. Under the Federal Fair Credit Reporting Act, the consumer credit reporting agency must remove accurate, negative information from your report only if it is over

1 seven years old. Bankruptcy information can be reported for 10
2 years.

3 If you have notified a consumer credit reporting agency in
4 writing that you dispute the accuracy of information in your file,
5 the consumer credit reporting agency must then, within 30
6 business days, reinvestigate and modify or remove inaccurate
7 information. The consumer credit reporting agency may not
8 charge a fee for this service. Any pertinent information and copies
9 of all documents you have concerning an error should be given to
10 the consumer credit reporting agency.

11 If reinvestigation does not resolve the dispute to your
12 satisfaction, you may send a brief statement to the consumer credit
13 reporting agency to keep in your file, explaining why you think the
14 record is inaccurate. The consumer credit reporting agency must
15 include your statement about disputed information in a report it
16 issues about you.

17 You have a right to receive a record of all inquiries relating to
18 a credit transaction initiated in 12 months preceding your request.
19 This record shall include the recipients of any consumer credit
20 report.

21 You may request in writing that the information contained in
22 your file not be provided to a third party for marketing purposes.

23 You have a right to place a “security alert” in your credit report,
24 which will warn anyone who receives information in your credit
25 report that your identity may have been used without your consent
26 ~~and that recipients. Recipients of your credit report are advised,~~
27 ~~but not required, to take reasonable steps, including contacting~~
28 ~~you at the telephone number you may provide with your security~~
29 ~~alert, to verify your identity prior to issuing credit lending money,~~
30 ~~extending credit, or completing the purchase, lease, or rental of~~
31 ~~goods or services.~~ The security alert may prevent credit, loans, and
32 services from being approved in your name without your consent.
33 However, you should be aware that taking advantage of this right
34 may delay or interfere with the timely approval of any subsequent
35 request or application you make regarding a new loan, credit,
36 mortgage, insurance, rental housing, employment, investment,
37 license, cellular phone, utilities, digital signature, Internet credit
38 card transaction, or other services, including an extension of credit
39 at point of sale. If you place a security alert on your credit report,
40 you have a right to obtain a free copy of your credit report at the

1 time the 90-day security alert period expires. A security alert may
2 be requested by calling the following toll-free telephone number:
3 (Insert applicable toll-free telephone number).

4 You have a right to place a “security freeze” on your credit
5 report, which will prohibit a consumer credit reporting agency
6 from releasing any information in your credit report without your
7 express authorization. A security freeze must be requested in
8 writing by certified mail. The security freeze is designed to prevent
9 credit, loans, and services from being approved in your name
10 without your consent. However, you should be aware that using a
11 security freeze to take control over who gets access to the personal
12 and financial information in your credit report may delay, interfere
13 with, or prohibit the timely approval of any subsequent request or
14 application you make regarding a new loan, credit, mortgage,
15 insurance, government services or payments, rental housing,
16 employment, investment, license, cellular phone, utilities, digital
17 signature, Internet credit card transaction, or other services,
18 including an extension of credit at point of sale. When you place
19 a security freeze on your credit report, you will be provided a
20 personal identification number or password to use if you choose
21 to remove the freeze on your credit report or authorize the release
22 of your credit report for a specific party or period of time after the
23 freeze is in place. To provide that authorization you must contact
24 the consumer credit reporting agency and provide all of the
25 following:

26 (1) The personal identification number or password.

27 (2) Proper identification to verify your identity.

28 (3) The proper information regarding the third party who is to
29 receive the credit report or the period of time for which the report
30 shall be available.

31 A consumer credit reporting agency must authorize the release
32 of your credit report no later than three business days after
33 receiving the above information.

34 A security freeze does not apply to a person or entity, or its
35 affiliates, or collection agencies acting on behalf of the person or
36 entity, with which you have an existing account, that requests
37 information in your credit report for the purposes of reviewing or
38 collecting the account. Reviewing the account includes activities
39 related to account maintenance, monitoring, credit line increases,
40 and account upgrades and enhancements.

1 You have a right to bring civil action against anyone, including
2 a consumer credit reporting agency, who improperly obtains
3 access to a file, knowingly or willfully misuses file data, or fails
4 to correct inaccurate file data.

5 If you are a victim of identity theft and provide to a consumer
6 credit reporting agency a copy of a valid police report or a valid
7 investigative report made by a Department of Motor Vehicles
8 investigator with peace officer status describing your
9 circumstances, the following shall apply:

10 (1) You have a right to have any information you list on the
11 report as allegedly fraudulent promptly blocked so that the
12 information cannot be reported. The information will be
13 unblocked only if (A) the information you provide is a material
14 misrepresentation of the facts, (B) you agree that the information
15 is blocked in error, or (C) you knowingly obtained possession of
16 goods, services, or moneys as result of the blocked transactions.
17 If blocked information is unblocked you will be promptly notified.

18 (2) Beginning July 1, 2003, you have a right to receive, free of
19 charge and upon request, one copy of your credit report each
20 month for up to 12 consecutive months.”

21 SEC. 3. Section 1798.85 of the Civil Code is amended to read:

22 1798.85. (a) Except as provided in subdivision (b), ~~on or~~
23 ~~after July 1, 2002~~, a person or entity may not do any of the
24 following, ~~and on or after January 1 2004, a state or local agency~~
25 ~~may not do any of the following~~:

26 (1) Publicly post or publicly display in any manner an
27 individual’s social security number. “Publicly post” or “publicly
28 display” means to intentionally communicate or otherwise make
29 available to the general public.

30 (2) Print an individual’s social security number on any card
31 required for the individual to access products or services provided
32 by the person or entity.

33 (3) Require an individual to transmit his or her social security
34 number over the Internet, unless the connection is secure or the
35 social security number is encrypted.

36 (4) Require an individual to use his or her social security
37 number to access an Internet Web site, unless a password or unique
38 personal identification number or other authentication device is
39 also required to access the Internet Web site.

(5) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed. Notwithstanding this paragraph, social security numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the social security number.

(b) Except as provided in subdivision (e), a person or entity that has used, prior to July 1, 2002, an individual's social security number in a manner inconsistent with subdivision (a), may continue using that individual's social security number in that manner on or after July 1, 2002, and a state or local agency that has used, prior to January 1, 2004, an individual's social security number in a manner inconsistent with subdivision (a), may continue using that individual's social security number in that manner on or after January 1, 2004, if all of the following conditions are met:

(1) The use of the social security number is continuous. If the use is stopped for any reason, subdivision (a) shall apply.

(2) The individual is provided an annual disclosure, commencing in the year 2002, that informs the individual that he or she has the right to stop the use of his or her social security number in a manner prohibited by subdivision (a).

(3) A written request by an individual to stop the use of his or her social security number in a manner prohibited by subdivision (a) ~~shall be~~ *is* implemented within 30 days of the receipt of the request. There ~~shall be no~~ *may not be* a fee or charge for implementing the request.

(4) ~~A~~ *The* person or entity, ~~not including a state or local agency,~~ *shall* does not deny services to an individual because the individual makes a written request pursuant to this subdivision.

(c) This section does not prevent the collection, use, or release of a social security number as required by state or federal law or the use of a social security number for internal verification or administrative purposes.

(d) This section does not apply to documents that are recorded or required to be open to the public pursuant to Chapter 3.5 (commencing with Section 6250), Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220)

of Division 7 of Title 1 of, or Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code. This section does not apply to records that are required by statute, case law, or California Rule of Court, to be made available to the public by entities provided for in Article VI of the California Constitution.

(e) (1) In the case of a health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, a contractor as defined in Section 56.05, or the provision by any person or entity of administrative or other services relative to health care or insurance products or services, including third-party administration or administrative services only, this section shall become operative in the following manner:

(A) On or before January 1, 2003, the entities listed in paragraph (1) of subdivision (e) shall comply with paragraphs (1), (3), (4), and (5) of subdivision (a) as these requirements pertain to individual policyholders or individual contractholders.

(B) On or before January 1, 2004, the entities listed in paragraph (1) of subdivision (e) shall comply with paragraphs (1) to (5), inclusive, of subdivision (a) as these requirements pertain to new individual policyholders or new individual contractholders and new groups, including new groups administered or issued on or after January 1, 2004.

(C) On or before July 1, 2004, the entities listed in paragraph (1) of subdivision (e) shall comply with paragraphs (1) to (5), inclusive, of subdivision (a) for all individual policyholders and individual contractholders, for all groups, and for all enrollees of the Healthy Families and Medi-Cal programs, except that for individual policyholders, individual contractholders and groups in existence prior to January 1, 2004, the entities listed in paragraph (1) of subdivision (e) shall comply upon the renewal date of the policy, contract, or group on or after July 1, 2004, but no later than July 1, 2005.

(2) A health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, a contractor, or another person or entity as described in paragraph (1) of subdivision (e) shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this article are implemented on or before the dates specified in this section.

1 (3) Notwithstanding paragraph (2), the Director of the
2 Department of Managed Health Care, pursuant to the authority
3 granted under Section 1346 of the Health and Safety Code, or the
4 Insurance Commissioner, pursuant to the authority granted under
5 Section 12921 of the Insurance Code, and upon a determination of
6 good cause, may grant extensions not to exceed six months for
7 compliance by health care service plans and insurers with the
8 requirements of this section when requested by the health care
9 service plan or insurer. Any extension granted shall apply to the
10 health care service plan or insurer's affected providers, pharmacy
11 benefits manager, and contractors.

12 (f) If a federal law takes effect requiring the United States
13 Department of Health and Human Services to establish a national
14 unique patient health identifier program, a provider of health care,
15 a health care service plan, a licensed health care professional, or
16 a contractor, as those terms are defined in Section 56.05, that
17 complies with the federal law shall be deemed in compliance with
18 this section.

19 (g) *A person or entity may not record or imbed a social security*
20 *number in or on a card or document, including, but not limited to,*
21 *using a bar code, chip, magnetic strip, or other technology, in*
22 *place of removing the social security number, as required by this*
23 *section.*

24 ~~SEC. 3. Notwithstanding Section 17610 of the Government~~
25 ~~Code, if the Commission on State Mandates determines that this~~
26 ~~act contains costs mandated by the state, reimbursement to local~~
27 ~~agencies and school districts for those costs shall be made pursuant~~
28 ~~to Part 7 (commencing with Section 17500) of Division 4 of Title~~
29 ~~2 of the Government Code. If the statewide cost of the claim for~~
30 ~~reimbursement does not exceed one million dollars (\$1,000,000),~~
31 ~~reimbursement shall be made from the State Mandates Claims~~
32 ~~Fund.~~

